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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/037,471	12/21/2001	Christopher B. McKay	MCW 306	5191
7590 11/16/2005 KOLISCH, HARTWELL, DICKINSON, McCORMACK & HEUSER Suite 200 520 S.W. Yamhill Street Portland, OR 97204			EXAMINER REHM, ADAM C	
			ART UNIT 2875	PAPER NUMBER

DATE MAILED: 11/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/037,471	MCKAY ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Adam C. Rehm	2875	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-63 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-22 and 24-63 is/are rejected.
- 7) ☒ Claim(s) 23 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. ____   |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>3/21/2002</u>   | 6) <input type="checkbox"/> Other: ____                                     |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this

Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1-10, 12-20, 24-31, 32-42, 44-54 and 56-63 are rejected under 35

U.S.C. 102(b) as being anticipated by PAEK ET AL. (US 6,163,248), which

discloses:

- A body having a beverage-holding portion adapted to receive a beverage (20 generally);
- An opening from which a user may drink the beverage (top of 20);
- A base adapted to support the beverage-holding portion on a surface (bottom of 20);
- A light-emitting assembly housed at least partially within the body/base including at least one light-emitting device located beneath the sides (Fig. 9, LED3) and at least one user-manipulated, two-position actuator (Column 5, Lines 1-14) with a timer/momentary switch (Column 2, Lines 18-42), wherein upon actuation by touch/pressure (Column 4, Lines 13-18), the light-emitting assembly is adapted to emit light generally toward the beverage-holding portion, through a stem (Fig. 4) or without (Fig.

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- 1), and further wherein at least a portion of the body is formed from a light-permeable material through which the emitted light may pass to illuminate at least a portion of the device (Column 1, Line 40-Column 2, Line 42) and wherein the user manipulated element extends generally away from the beverage-holding portion (Fig. 1 illustrates the switch (TSW) in a handle portion (22) that is extended away from the beverage holding/contents portion);
- Sides that are at least substantially formed from a light-permeable material, and further wherein the light-emitting assembly is adapted to emit light that passes through the sides (Column 3, Line 58, Fig. 1);
  - A light-directing/deflecting structure/lens assembly with a shade adapted to redirect at least a substantial portion of the emitted light that would otherwise pass through a lower portion of the beverage-holding portion to reduce the amount of emitted light that passes through the lower portion (Fig. 4 and 6; Column 4, Lines 32-36 disclose reflective elements that direct 100% of light upward preventing light from passing through a lower portion/downward direction and effectively shading a portion of the body (84/88));
  - A plurality of lens surfaces (lens portions of LED1 and LED2, Fig. 4);
  - A battery (BT); and

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- A hollow cavity containing a fluid/gas (57 illustrates a hollow hole that is opened at a bottom end and thus, not a vacuum and containing atmospheric gasses).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 11 and 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over PAEK ET AL. (US 6,163,248) as applied to Claims 10, 3 and 1 with respect to Claim 11 and Claims 47 and 33 with respect to Claim 50 above, and further in view of WELLER (US 5,070,435). PAEK discloses the claimed invention, but does not specifically disclose a shade with an opaque region. However, WELLER teaches an opaque/shaded region (14) for the purpose of concealing the electronic components mounted therein (Column 2, Lines 61-63). It would have been obvious to one of ordinary skill in the art at the time of invention to modify PAEK and use the opaque region as taught by WELLER in order to conceal the electronics portion of PEAK.

3. Claims 21 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over PAEK ET AL. (US 6,163,248) as applied to Claims 19, 15 and 1 above, and further in view of ROSAIA (US 5,624,177). PAEK discloses the

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claimed invention including a cavity containing a plurality of solid particles (Fig. 4, 85, 86, 3T), but does not disclose a stem cavity containing a liquid. However, ROSAIA teaches a stem cavity (Fig. 1) filled with a liquid and gas bubbles for the purpose of providing a visually pleasing display (see Abstract). It would have been obvious to one of ordinary skill in the art at the time of invention to modify PAEK and use a long, completely hollow stem cavity as taught by ROSAIA for the obvious reason of providing a longer lifespan for gas bubbles in addition to the cavity containing solid particles. Notably, changes in form of any element of a prior patent must result in more than useful natural phenomenon that man has accumulated through common knowledge. Such a change cannot sustain patentability where involves is only extended application of obvious attributes from prior art. *Span-Deck Inc. v. Fab-Con Inc.*, 215 USPQ 835.

4. Claims 32 and 43-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over PAEK ET AL. (US 6,163,248), which discloses the claimed invention, but does not specifically disclose a removable base having a coupling structure and attachment means via threaded or friction-fit engagement.

However, it would have been obvious to one of ordinary skill in the art at the time of invention to make the base of PAEK ET AL. separable, since it has been held that constructing a formerly integral structure in various elements only involves routine skill in the art. *Nerwin v. Erlichman*, 168 USPQ 177, 179. Furthermore, it is notoriously known in the art to manufacture an illuminated beverage container with a separable electronics-containing base in order to avoid damage to the

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electronics during cleaning of the container, thus requiring a coupling structure and attachment/engagement means, e.g. threaded or friction-fit. It would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize a coupling structure and attachment/engagement means, e.g. threaded or friction-fit since it was known in the art that beverage containers require cleaning and water damages electronics.

### ***Allowable Subject Matter***

5. Claim 23 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: Claim 23 is allowable because none of the prior art of record disclose an illuminated beverage-holding device having a stem portion extending between a base and beverage-holding portion having an internal cavity containing a liquid including at least two immiscible liquids.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

6. CHEN (US 5,931,558) discloses an illuminated goblet structure having a removable base portion.

7. TIPTON (US 5,211,699) discloses an opaque-indicia portion in the sidewall of an illuminated beverage container.

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8. DITTO (US 4,344,113) discloses an apparatus to illuminate a liquid drink comprising a glass receptacle adapted to fit on a base.
9. RUDOLPH (3,374,344) discloses a beverage glass comprising a shell removably mounted on a stem containing electrical components including a rotating actuator.
10. SCHROYER (US 2,224,319) discloses an illuminated drinking vessel supported by a hollow base, which is detachable therefrom and having a lamp with a push-button actuator.
11. CAHILL (US 919,691) discloses an illuminated drinking glass comprising a bowl having a stem and a tube, which can easily be removed from the drinking glass.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Adam C. Rehm whose telephone number is 571.272.8589. The examiner can normally be reached on M-F 9-5:30 EST.

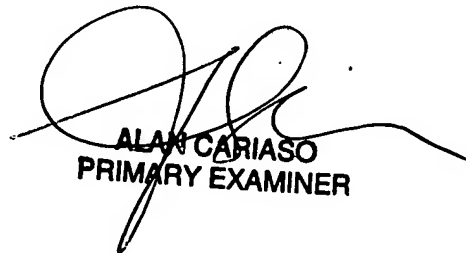
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sandra O'Shea can be reached on 571.272.2378. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

ACR  
11/11/2005



ALAN CARIASO  
PRIMARY EXAMINER